

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Amendment to Development Order 96-455 (Marquette Shores Borrow Pit)

DEPARTMENT: Planning & Development **DIVISION:** Planning

AUTHORIZED BY: Dan Matthys **CONTACT:** Tony Walter ^{TW} **EXT.** 7375

Agenda Date 04/11/06 **Regular** ☐ **Consent** ☐ **Work Session** ☐ **Briefing** ☐
Public Hearing – 1:30 ☒ **Public Hearing – 7:00** ☐

MOTION/RECOMMENDATION:

1. APPROVE the request to amend Seminole County Development Order 96-455 to release in whole the conditions on the property located on the south side of Marquette Avenue approximately 650 feet east of Ohio Street, based on staff findings, (Benjamin O. Benham, applicant); or
2. DENY the request to amend Seminole County Development Order 96-455 to release in whole the conditions on the property located on the south side of Marquette Avenue approximately 650 feet east of Ohio Street, based on staff findings, (Benjamin O. Benham, applicant); or
3. CONTINUE the item to a time and date certain.

District 5 – Commissioner Carey

Tony Walter, Planning Manager

BACKGROUND:

The applicant is requesting to amend Seminole County Development Order 96-455 relating to property located on the south side of Marquette Avenue approximately 650 feet east of Ohio Street to clear the cloud on the title of the Property. The proposed amendment is to release in whole the conditions of the 1996 Development Order which shall no longer perpetually burden, run with and follow the property, nor be a servitude upon and binding upon the property.

On December 9, 1996, Seminole County issued a Development

Reviewed by:	
Co Atty:	<u>KFT</u>
DFS:	
OTHER:	
DCM:	<u>AS</u>
CM:	
File #	<u>pd130pdp01</u>

Order as part of a settlement relative to a prior denial of expansion and extension (as applied for) of a borrow pit permit. The property owners at that time were James A. and Betty R. Widdis and the applicant was Marquette Shores, Inc. Condition (1) of the Development Order limits the density to one (1) dwelling unit per acre north of the borrow pit fronting along Marquette Avenue,

On July 17, 2002 the Property was acquired by Benjamin O. Benham as Trustee of the Benjamin O. Benham Family Trust and on February 9, 2004 the Property was annexed by the City of Sanford, placing the Property within the jurisdiction of the City of Sanford. The Property is no longer being used as a borrow pit.

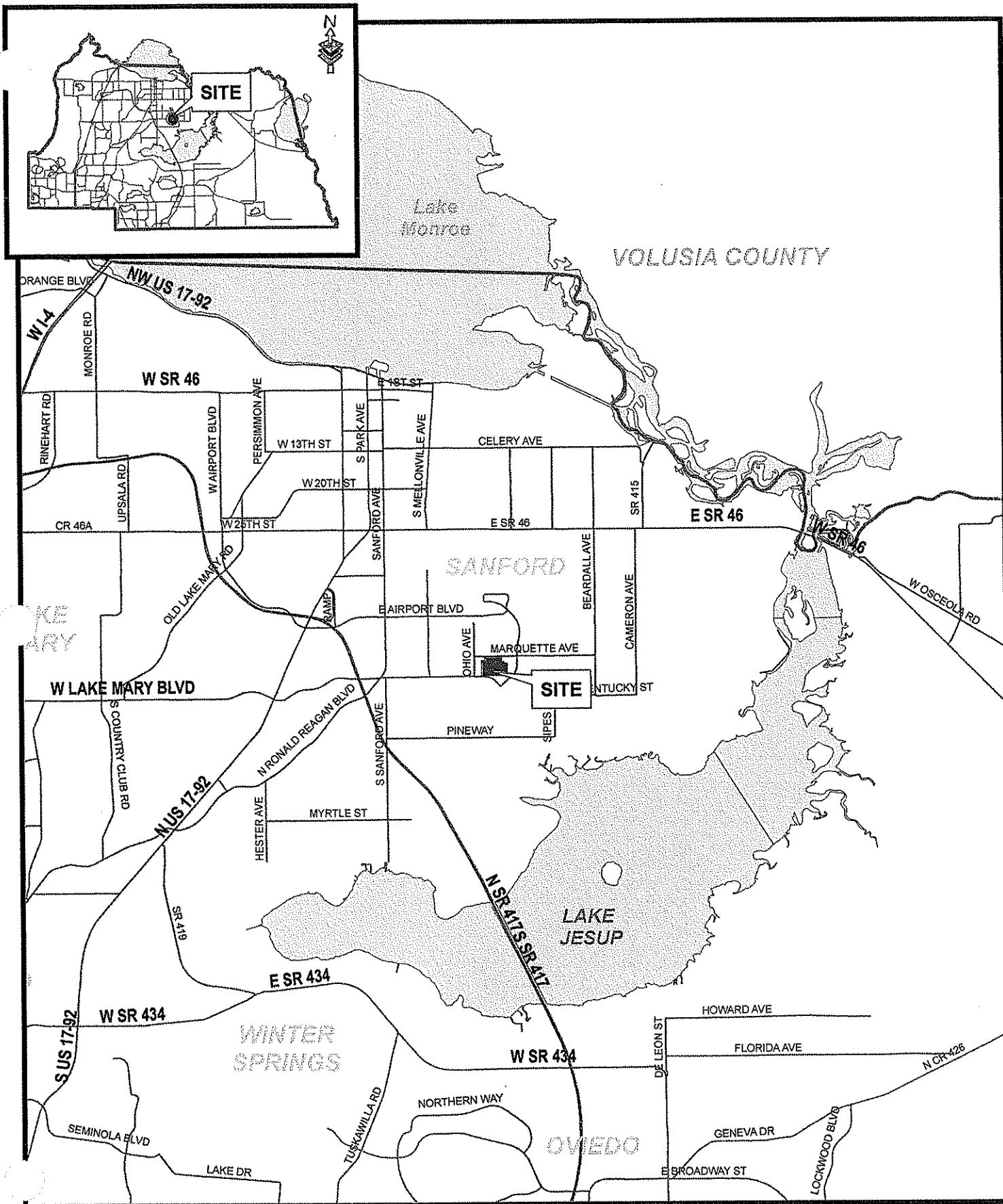
Because the D.O. conditions "run with the land", the applicant's attorney and the County Staff determined that amending Development Order 96-455 to release the conditions is required to clear the cloud on the title of the Property. This action also releases the condition limiting density to one (1) dwelling unit per acre north of the borrow pit fronting along Marquette Avenue and allows the property to be developed at a higher density in the City of Sanford. Staff finds that the purpose for which the Development Order was issued no longer exists.

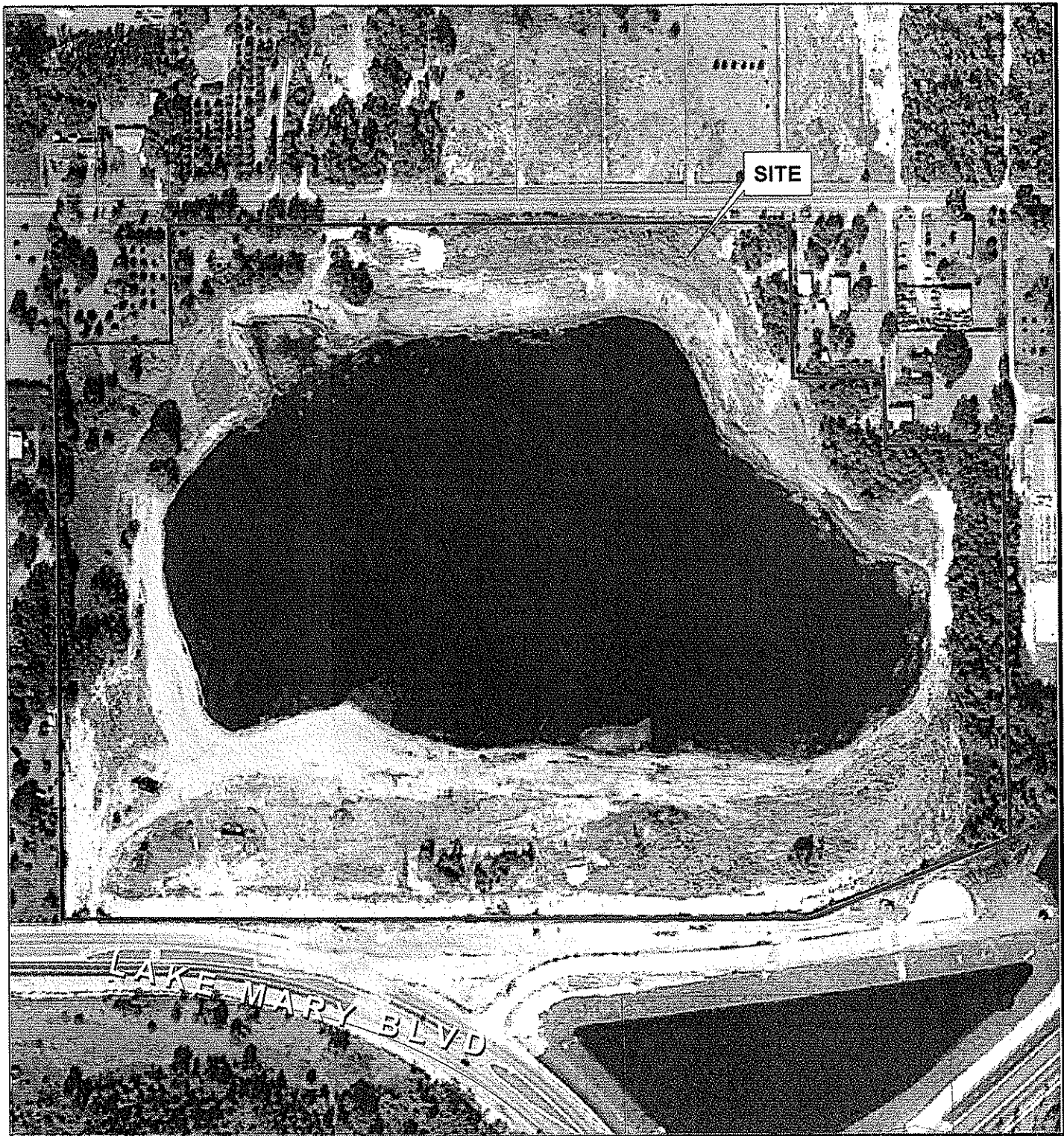
STAFF RECOMMENDATION:

Staff recommends APPROVAL of the request to amend Seminole County Development Order 96-455 to release in whole the conditions on the Property located on the south side of Marquette Avenue approximately 650 feet east of Ohio Street, based on staff findings.

Attachments:

Location Map
Aerial Photo
Development Order No. 96-455
Amendment Development Order





Parcel
Subject Property



January 2004 Color Aerials

FILE NO. 205-95DEVELOPMENT ORDER NO. 96-455
BORROW PIT PERMIT NO. 92-03SEMINOLE COUNTY DEVELOPMENT ORDER

On December 9, 1996, Seminole County issued this Development Order relating to and touching and concerning the following described property which is generally located on the north side of East Lake Mary Boulevard, south of Marquette Avenue and approximately four hundred feet (400') east of Ohio Street:

See attached Borrow Permit No. 92-03 Legal Description

[The aforescribed legal description has been provided to Seminole County by the owner of the aforescribed property. Throughout this Development Order this property shall be referred to as the "Property".]

FINDINGS OF FACT/CONCLUSIONS OF LAW

Property

Owner: James A. and Betty R. Widdis

Applicant: Marquette Shores, Inc.

Project Name: Marquette Shores Borrow Pit Permit. Expansion of the permit to include 27.8 acres, more or less, and extension of the permit for four (4) years beginning November 12, 1996.

Requested Development Approval:

Settlement Relative to Prior Denial of Expansion and Extension (as applied for) of a borrow pit permit. This Development Order implements a settlement of a legal dispute framed in the appeal of the decision of the Board of County Commissioners as set forth in the case of Marquette Shores, Inc. v. Seminole County Board of County Commissioners, (Circuit Court Case Number 96-16). The matters set forth herein fully resolve the dispute between the County and the Applicants and provide for development approval as set forth herein.

The development approval sought is consistent with the Seminole County Comprehensive Plan and will be developed consistent with and in compliance to applicable land development regulations and all other applicable regulations and ordinances.

The Owners of the Property and Marquette Shores, Inc. have expressly agreed to be bound by and subject to the development conditions and commitments stated below and have covenanted and agreed to have such conditions and commitments run with, follow and perpetually burden the aforescribed property.

THIS DOCUMENT PREPARED BY:
LONNIE H. CROST, DEPUTY COUNTY ATTORNEY AND
GLENN SEMANSTEIN, DEVELOPMENT REVIEW MANAGER
1101 E. FIRST STREET
SANFORD, FLORIDA 32771

OFFICIAL RECORDS
BOOK 3168 PAGE 0653

SEMINOLE COUNTY
CLERK OF CIRCUIT COURT

922050

96 DEC -9 PM12:06

SEMINOLE COUNTY FL.
RECORDED & VERIFIED

ORDER

NOW, THEREFORE, it is ORDERED AND AGREED THAT:

(a) The aforementioned application for development approval of the expansion of the borrow pit permit (92-03) from 12 acres more or less, to 27.8 acres, more or less, and the extension of the said permit for four (4) years running from November 12, 1996 GRANTED.

(b) All development relative to the Property shall fully comply with all applicable codes and ordinances in effect in Seminole County at the time of issuance of permits.

(c) The conditions upon this development approval and the commitments made as to this development approval, all of which have been accepted by and agreed to by the Owners of the property and Marquette Shores, Inc. are as follows:

(1) The property to the north of the borrow pit fronting along Marquette Avenue shall be developed at a maximum residential density of one (1) dwelling unit per acre.

(2) There shall be no commercial activities on the Property other than borrow pit operations during the four (4) year excavation period.

(3) Borrow pit operations are prohibited on Sundays except in emergency situations which must be subsequently confirmed with County staff.

(4) Operating hours to be between the hours of 7:00 a.m. to 6:00 p.m., or daylight hours, whichever is more restrictive, Monday through Saturday for a period of four (4) years.

(5) Post a bond in the amount of \$100,000 to cover any damage to County Roads and to ensure that the pit is operated in compliance with County regulations and the approved plans. Upon completion of the excavation, post a \$25,000 reclamation bond for a period of two (2) years.

(6) Haul route to be east and west on East Lake Mary Boulevard. No trucks to use Ohio Street or Marquette Avenue between Ohio and Airport entrance except for delivery to projects located upon those streets.

(7) Continue groundwater monitoring program until six months after pit excavation is terminated.

(8) Borrow pit shall be subject to the County's Code Enforcement Board process upon violation of any code.

(9) Berm on west to be removed and relocated a minimum distance of fifty feet (50') from the west property line. All

OFFICIAL RECORDS
BOOK 1000
PAGE 0654

3168 0654

other existing berms may remain and shall be further seeded and fertilized to maintain a vegetative cover.

(10) Where berms are greater than six feet (6') in height, they shall be re-graded, as much as is practicable, to maintain an even appearance while still preserving the existing vegetative cover.

(11) Removal of trees and land clearing debris chipping or mulching shall be accomplished within eighteen (18) months. Burning of any land clearing debris is prohibited.

(d) The conditions of this Development Order touch and concern the aforescribed Property and the conditions, commitments and provisions of this Development Order shall perpetually burden, run with and follow the said Property and be a servitude upon and binding upon said Property unless released in whole or part by action of Seminole County by virtue of a document of equal dignity herewith. The Owners of the said Property have expressly covenanted and agreed to this provision and all other terms and provisions of this Development Order.

(e) The County, in a joint effort to resolve the matters in dispute relative to the subject law suit, shall not appeal the decision of the Circuit Court to the Fifth District Court of Appeal.

(f) The Owners and Marquette Shores, Inc. agree that this Development Order complies with the instructions of the Circuit Court and further agree not to seek enforcement of said Circuit Court decision; provided, however, that the Owners and Marquette Shores, Inc. may seek enforcement of the terms and conditions of this Development Order. Each party in the case shall bear its own costs and the Owners, the Applicants and the County hereby mutually release one another as to all matters relating to the subject dispute.

(g) The terms and provisions of this Development Order are not severable and in the event any portion of this Development Order shall be found to be invalid or illegal then the entire Development Order shall be null and void.

DONE AND ORDERED on the date first above.

As approved and authorized for execution by the Board of County Commissioners at their meeting of November 12, 1996.

By: J. Kevin Grace
J. KEVIN GRACE
Deputy County Manager/
Community Services
December 9, 1996

OFFICIAL RECORDS
BOOK PAGE
3168 0655

COMEN NOW, James A. and Betty R. Widdis the Owners of the
aforescribed property in this Development Order, on behalf of
itself and its heirs, successors, assigns or transferees of any
nature whatsoever and consents to, agrees with and covenants to
perform and fully abide by the provisions, terms, conditions and
commitments set forth in this Development Order.

WITNESSES:

Sally L. Widdis
Print Name Sally L. Widdis

Shirley L. Widdis
Print Name Shirley L. Widdis

OWNERS

By: James A. Widdis
JAMES A. WIDDIS

By: Betty R. Widdis
BETTY R. WIDDIS

STATE OF Florida
COUNTY OF Seminole ss

3168 0656
SEMINOLE CO. FL
OFFICIAL RECORDS
BOOK

The foregoing instrument was acknowledged before me this
day of December, 19 94, by JAMES A. WIDDIS and BETTY R.
WIDDIS. They are personally known to me or have produced
Fla. Driver License # W 82-0-096-18-754 as identification.
And James # W 320-49-49-492

John L. Sauls, Jr.
Print Name John L. Sauls, Jr.
Notary Public in and for the County
and State Aforementioned
My commission expires: _____



JOHN L. SAULS, JR.
MY COMMISSION / COMMISSION EXPIRES
October 15, 1996
BONDED THROUGH TONY FAIR INSURANCE, INC.

WITNESSES

Print Name Sidney L. Violen, Jr.

Print Name Debra K. Cochran

MARQUETTE SHORES, INC.

By: BEN BENHAM, President

By: SID VIHLEN, JR., Vice President

STATE OF FLORIDA)
COUNTY OF SEMINOLE) ss

The foregoing instrument was acknowledged before me this day of December, 1996, by BEN BENHAM, President and SID VIHLEN, JR., Vice President of MARQUETTE SHORES, INC., a Florida corporation, on behalf of the corporation. They are personally known to me or have produced is as identification.

Dorothy T. Greene
Print Name DOROTHY T. GREENE
Notary Public in and for the County
and State Aforementioned
My commission expires: _____

Sid Violen, Jr.
SID VIHLEN JR., President
Attorney for Marquette Shores, Inc.



OFFICIAL RECORDS
BOOK

SEMINOLE
2168 0657

Triangle
Reprographics, Inc.
417 West Galt Street, Orlando, Florida 32802-4422 Tel: (407) 438-1402 Fax: (407) 438-1400

OFFICIAL RECORDS
BOOK

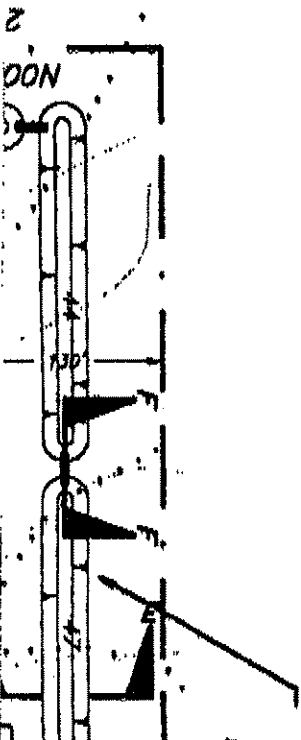
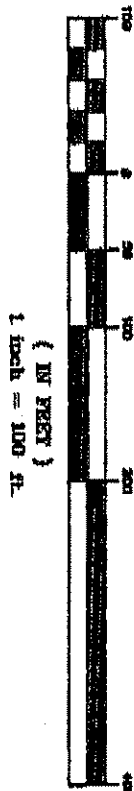
3168 0658

SEMINOLE CO., FL
MARK CLETTE SHARES

LEGAL DESCRIPTION:

W 3/4 OF THE NE 1/4 OF THE SW 1/4 (LESS NORTH 417.5 FEET
OF THE EAST 208.75 FEET AND THE NORTH 291 FEET OF THE WEST
150 FEET OF THE EAST 358.75 FEET) AND THE E 1/2 OF THE NW
1/4 OF THE SW 1/4 (LESS NORTH 245 FEET OF THE WEST 200
FEET) OF SECTION 8, TOWNSHIP 20 SOUTH, RANGE 31 EAST.
(CONTAINING APPROXIMATELY 48.39 ACRES).

GRAPHIC SCALE



**AMENDMENT TO
SEMINOLE COUNTY DEVELOPMENT ORDER 96-455**

RECITALS

WHEREAS, the Seminole County Board of County Commissioners issued Seminole County Development Order 96-455 (the "Development Order") relating to and touching and concerning the real property (the "Property") as described on Exhibit "A" and as recorded in the Public Records of Seminole County in Official Records Book 3168, Page 0653; and

WHEREAS, the purpose of the Development Order was to settle a legal dispute between Seminole County and the then Property owners—James A. and Betty R. Widdis—concerning the development approval of a borrow pit permit on the Property; and

WHEREAS, the Property was acquired by Benjamin O. Benham as Trustee of the Benjamin O. Benham Family Trust on July 17, 2002; and

WHEREAS, on February 9, 2004, the Property was annexed by the City of Sanford pursuant to City Ordinance No. 3839 as recorded in the Public Records of Seminole County in Official Records Book 5193, Page 1776, placing the Property within the jurisdiction of the City of Sanford; and

WHEREAS, because the Property is no longer being used as a borrow pit by the Benjamin O. Benham Family Trust, and the Property is now within the jurisdiction of the City of Sanford, the purposes for which the Development Order was issued no longer exist; and

WHEREAS, the cloud on the title of the Property created by the Development Order needs to be removed;

NOW, THEREFORE, it is agreed that:

1. In accordance with subparagraph (d), the Property is hereby released in whole from the conditions of the Development Order which shall no longer perpetually burden, run with and follow the said Property, nor be a servitude upon and binding upon said Property.
2. This Amendment shall be recorded in the Public Records of Seminole County, Florida.

IN WITNESS WHEREOF, the parties have executed this document this _____ day of _____, 2006.

As approved and authorized for execution by the
Board of County Commissioners at their
meeting of _____,
2006.

By: _____
Carlton D. Henley
Chairman

COMES NOW, Benjamin O. Benham, as Trustee of the Benjamin O. Benham Family Trust and the owner of the aforementioned Property, hereby consents to and agrees with the terms set forth in this Amendment.

Witnessed this ____ day of _____, 2006:

BENJAMIN O. BENHAM, as Trustee of
the Benjamin O. Benham Family Trust

Print name: _____

Print name: _____

EXHIBIT "A"

W $\frac{3}{4}$ of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ (Less North 417.5 feet of the East 208.75 feet and the North 291 feet of the West 150 feet of the East 358.75 feet) and the E $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ (Less North 245 feet of the West 200 feet) of Section 8, Township 20 South, Range 31 East.

(Containing approximately 46.39 acres).